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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 LOS ANGELES WATERKEEPER, a
15 California non-profit corporation; INLAND
16 EMPIRE WATERKEEPER, a project of
17 Orange County Coastkeeper, and ORANGE
18 COUNTY COASTKEEPER, a California
19 non-profit corporation;

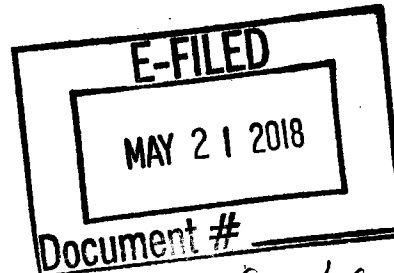
20 Plaintiffs,

21 v.

22 CEMEX CONSTRUCTION MATERIALS
23 PACIFIC LLC, a Delaware corporation;

Civil Case No. 5:17-cv-01137-~~SP~~

~~[Proposed]~~ **CONSENT DECREE**



1 LOS ANGELES WATERKEEPER

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1 sand and gravel; vehicle maintenance, cleaning, and storage; vehicle fueling; transporting
2 raw materials across the site; raw and finished materials storage; weighing aggregate and
3 cement; mixing aggregate, water and cement to form concrete; and loading trucks with
4 concrete;

5 **WHEREAS**, Plaintiffs contend that Defendant's operations at the Facilities result
6 in discharges of pollutants into waters of the United States and contends that those
7 discharges are regulated by the Clean Water Act, Sections 301(a) and 402, 33 U.S.C.
8 §§ 1311(a), 1342;

9 **WHEREAS**, the Stormwater Permit includes the following requirements for all
10 permittees, including Defendant: (1) develop and implement a stormwater pollution
11 prevention plan ("SWPPP") and a stormwater monitoring and reporting program
12 ("M&RP"), (2) control pollutant discharges using, as applicable, best available
13 technology economically achievable ("BAT") or best conventional pollutant control
14 technology ("BCT") to prevent or reduce pollutants, (3) implement BAT and BCT
15 through the development and application of Best Management Practices ("BMPs"),
16 which must be included and updated in the SWPPP, and (4) when necessary, implement
17 additional BMPs to prevent or reduce any pollutants that are causing or contributing to
18 any exceedance of water quality standards ("WQS");

19 **WHEREAS**, on March 13, 2017, Plaintiffs issued notices of intent to file suit
20 ("60-Day Notices") under Section 505(b)(1)(a) of the of the Clean Water Act, 33 U.S.C.
21 § 1365(b)(1)(A), to Defendant, its registered agent, the Administrator of the U.S.
22 Environmental Protection Agency ("EPA"), the Executive Director of the State Water
23 Resources Control Board ("State Water Board"), the Executive Officer of the Santa Ana
24 Regional Water Quality Control Board, and/or the Executive Director of the Los Angeles
25 Regional Water Quality Control Board ("Regional Water Board"), and the Regional
26 Administrator of EPA Region IX, alleging violations of the Clean Water Act and the
27 Stormwater Permit, Water Quality Order No. 92-12-DWQ, as amended by Water Quality
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1 Order 97-03-DWQ, and as amended by Water Quality Order 2014-0057-DWQ, at the
2 Facilities;

3 **WHEREAS**, on June 9, 2017, Plaintiffs filed a complaint against Defendant in the
4 United States District Court, Central District of California, Civil Case No. 5:17-cv-
5 01137-SP;

6 **WHEREAS**, Plaintiffs allege Defendant is in violation of the substantive and
7 procedural requirements of the Stormwater Permit and the Clean Water Act;

8 **WHEREAS**, Defendant denies all allegations and claims contained in the 60-Day
9 Notices and the complaint and reserves all rights and defenses with respect to such
10 allegations and claims;

11 **WHEREAS**, the Settling Parties have agreed that it is in their mutual interest and
12 choose to resolve in full Plaintiffs' allegations in the 60-Day Notices and complaint
13 through settlement and avoid the cost and uncertainties of further litigation; and

14 **WHEREAS**, all actions taken by Defendant pursuant to this Consent Decree shall
15 be made in compliance with all applicable Federal and State laws and local rules and
16 regulations;

17 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE**
18 **SETTLING PARTIES, AND ORDERED AND DECREED BY THE COURT, AS**
19 **FOLLOWS:**

20 1. The Court has jurisdiction over the subject matter of this action pursuant to
21 Section 505(a)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(a)(1)(A).

22 2. Venue is appropriate in the Central District Court pursuant to Section
23 505(c)(1) of the Clean Water Act, 33 U.S.C. § 1365(c)(1), because the Facilities at which
24 the alleged violations took place are located within this District.

25 3. The complaint alleges claims upon which, if proved, relief may be granted
26 against Defendant pursuant to Section 505 of the Clean Water Act, 33 U.S.C. § 1365.

27 4. Plaintiffs have standing to bring this action.

1 5. The Court shall retain jurisdiction over this matter for purposes of enforcing
2 the terms of this Consent Decree for the life of the Consent Decree, or as long thereafter
3 as is necessary for the Court to resolve any motion to enforce this Consent Decree, but
4 only regarding issues raised within the 3 year term of this Consent Decree.

5 **I. OBJECTIVES**

6 6. It is the express purpose of the Settling Parties entering into this Consent
7 Decree to further the objectives set forth in the Clean Water Act, 33 U.S.C. §§ 1251 *et*
8 *seq.*, and to resolve those issues alleged by Plaintiffs in its 60-Day Notices and complaint.

9 7. In light of these objectives and as set forth fully below, Defendant agrees to
10 comply with the provisions of this Consent Decree, the Stormwater Permit, and all
11 applicable provisions of the Clean Water Act at the Facilities.

12 **II. COMMITMENTS OF THE SETTLING PARTIES**

13 **A. Agency Review, Effective Date, and Term of Consent Decree**

14 8. **Agency Review:** Plaintiffs shall submit this Consent Decree to the United
15 States Department of Justice and the Environmental Protection Agency (collectively
16 “Federal Agencies”) within three (3) business days of the final signature of the Settling
17 Parties for agency review consistent with 40 C.F.R. § 135.5. In the event that the Federal
18 Agencies object to entry of this Consent Decree, the Settling Parties agree to meet and
19 confer to attempt to resolve the issue(s) raised by the Federal Agencies within a
20 reasonable amount of time. Following the Federal Agencies’ review, Plaintiffs shall
21 submit the Consent Decree to the Court for entry.

22 9. **Effective Date:** The Effective Date of this Consent Decree shall mean be the
23 day after the end of the forty-five (45) day agency review period required by 40 C.F.R. §
24 135.5.

25 10. **Term of Consent Decree:** This Consent Decree shall terminate three (3)
26 years from the Effective Date unless one of the Settling Parties has invoked Dispute
27 Resolution in accordance with Section III of this Consent Decree, in which case the
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1 Consent Decree will terminate within the earlier of fifteen (15) days of notice by the
2 Settling Party that invoked Dispute Resolution that the dispute has been fully resolved or
3 an order of the federal court resolving the dispute and terminating the Consent Decree.

4 **B. Discharges from the Facility to the Separate Storm Sewer**

5 **i. Best Management Practices for Stormwater Discharges**

6 11. **Additional Best Management Practices:** Defendant shall develop and
7 implement the BMPs identified herein. Specifically, Defendant shall develop and
8 implement BMPs to prevent and/or reduce contamination in stormwater discharges from
9 the Facilities consistent with use of BAT and BCT and/or in compliance with WQS.

10 12. **Non-Structural BMPs:** Within sixty (60) days of the Effective Date,
11 Defendant shall develop and implement the following non-structural BMPs at the
12 Facilities:

13 13. **Sweeping.** Institute a daily sweeping program using a PM-10 compliant
14 and/or wet/dry vacuum sweeper and covering all exterior areas of the site exposed to
15 rainfall or runoff and accessible to the sweeper. To document compliance with this
16 paragraph, Defendant will institute an established sweeping program which details the
17 areas to be swept and the frequency those areas will be swept, and will include these
18 details in each Facilities SWPPP, respectively;

19 14. **Vehicle Maintenance.**

- 20 a. Compton Facility and Fontana Facility: With the exception of minor
21 vehicle maintenance during days without any precipitation, continue to
22 maintain vehicles and equipment under cover and in a location where no
23 water or other fluids can flow to an area contacted by rainfall or runoff.
24 This allows work inside the shops at any time;
25 b. Irvine Facility: Do not conduct major engine or transmission repairs on-
26 site. Conduct all allowable vehicle and equipment maintenance in an area
27 where a drain cover has been installed (if applicable) during maintenance
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1 and all materials and wastes associated with maintenance activities have
2 been completely cleaned up prior to removing drain cover;

3 15. **Secondary Containment.** Defendant shall store all petroleum-based materials
4 and petroleum wastes and all bulk tank concrete additives and liquid coloring agents that
5 could come into contact with rainfall or runoff within secondary containment having a
6 volume at least 110 percent (110%) of the contents of the largest vessel stored within the
7 containment;

8 16. **pH Neutralization.** If the capacity of the stormwater runoff storage provided
9 according to the provisions of paragraph 18 below becomes filled to the point where it is
10 apparent that pumping, transporting, or otherwise managing water is insufficient to
11 prevent an off-site discharge, Defendant shall determine the pH of the impending
12 discharge water via the method required in paragraph 31, below, before any discharge is
13 allowed to occur. If the pH is outside the range of 6.5-8.5, Defendant shall initiate
14 treatment of the entire volume of stored water to be discharged, and maintain treatment
15 during discharge to the extent necessary to maintain pH within the discharge between 6.5
16 and 8.5;

17 17. Defendant shall document implementation of the non-structural BMPs
18 required by this section by submitting amended SWPPPs incorporating those BMPs.

19 18. **Stormwater Retention BMP:** Defendant shall develop and implement a
20 stormwater retention system that to retain the following site-specific volumes of
21 stormwater: Fontana – 30,134 cubic feet; Compton – 9,986 cubic feet; and Irvine – 7,128
22 cubic feet.

23 19. Within one hundred twenty (120) days of the Effective Date, Defendant shall
24 submit to Plaintiffs for review and comment a SWPPP modification to incorporate
25 Stormwater Retention for each of the Facilities. The SWPPP Stormwater Retention
26 modification shall, at a minimum, specify: (a) the drainage area contributing to the
27 retention facility; (b) the storm runoff volume in cubic feet, as stated above; (c) each
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1 facility's retention system or systems location(s), inlet(s), plan(s) and elevation view(s)
2 with dimensions, volume, and outlet; (d) the receiver of the discharge (e.g., municipal
3 storm drain system, a receiving water body), (e) the option to pump and move water to
4 other sites; and (f) any discharge location in the event the system capacity is exceeded
5 and a discharge would be imminent;

6 20. Plaintiffs shall have thirty (30) days from receipt to provide comments on the
7 proposed SWPPP Stormwater Retention modification to Defendant;

8 21. Within twenty-one (21) days of receipt of comments from Plaintiffs,
9 Defendant shall incorporate Plaintiffs' comments into the SWPPP Stormwater Retention
10 modification, or justify in writing why any comment is not incorporated;

11 22. The SWPPP Stormwater Retention modification developed and implemented
12 pursuant to this Consent Decree are an obligation of this Consent Decree;

13 23. Any disputes about the SWPPP Stormwater Retention modification shall be
14 resolved pursuant to the dispute resolution procedures set out in Section III, below;

15 24. Defendant shall complete implementation of the SWPPP Stormwater
16 Retention modification by October 15, 2018. Defendant's compliance shall be excused to
17 the extent delays in implementation are caused by government permitting delays.
18 Defendant shall notify Plaintiffs of any government permitting delays that are likely to
19 cause Defendant to miss the deadline required by this paragraph, and shall meet and
20 confer with Plaintiffs to agree on a reasonable extension to the deadline.

21 **ii. Stormwater Discharge Points, Sampling, and Visual Observations**

22 25. **Stormwater Discharge Points:** Defendant shall not discharge stormwater
23 from the Facilities in storm event(s) below or at the design standards set out in paragraph
24 18, above. Defendant shall discharge stormwater from the Facilities at the discharge
25 points and locations identified in the SWPPP Stormwater Retention modification only.

26 26. **Rain Gauge:** The Parties agree that the existing rain gauges at the following
27 existing, non-CEMEX locations can be referred to for purposes of this Consent Decree:
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1 Fontana – (Ontario International Airport); Compton – (Northrop-Hawthorne Municipal
2 Airport); Irvine – (John Wayne Airport). In the event any of these rain gauges is taken
3 out of service by the entity responsible for its operation, the Parties agree to use the next
4 closest rain gauge to the Facility for purposes of this paragraph. The Parties agree that the
5 amount of rain measured at the aforementioned rain gauges will be the stipulated amount
6 of precipitation received at the corresponding Facility. CEMEX may, at its discretion,
7 install a rain gauge at any of the Facilities, in which case the installed rain gauge shall be
8 used to determine the amount of precipitation received at the corresponding Facility.

9 27. **Stormwater Sampling:** Stormwater monitoring procedures shall be
10 implemented at the Facilities as follows:

11 28. **Frequency.** During the life of this Consent Decree, Defendant shall collect
12 samples of any stormwater discharge as a result of a Qualified Storm Event (“QSE”) as
13 defined in Section XI(B)(1) and Section XI(B)(5) of the Stormwater Permit, but limited
14 to the frequency required as a member of a compliance group once the retention set forth
15 in paragraph 18 is operational. Defendant will collect samples of any discharge of
16 retained stormwater at the time of the discharge;

17 29. **Location.** During the life of this Consent Decree, Defendant shall collect
18 samples from sampling locations identified in the SWPPP, including any locations
19 identified following completion of the SWPPP Stormwater Retention modification and
20 any other modifications to the SWPPP occurring during the life of this Consent Decree;

21 30. **Parameters.** All stormwater samples collected pursuant to this section shall be
22 analyzed for the following parameters:

- 23 a. total suspended solids, oil and grease, total recoverable aluminum, total
24 recoverable iron, total recoverable lead, and pH in discharges from each of
25 the Facilities; and
- 26 b. total recoverable zinc and total recoverable copper in discharges from the
27 Compton Facility and Irvine Facility in addition to the parameters in
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1 30(a)..

2 31. Lab. A laboratory accredited by the State of California shall analyze all
3 samples collected pursuant to this Consent Decree, excepting pH which will be analyzed
4 onsite using a calibrated portable instrument for pH in accordance with accompanying
5 manufacturer's instructions;

6 32. Detection Limit. Defendant shall ensure analytical methods used by the
7 laboratory, including the detection limits, meet the standards required by the Storm Water
8 Permit;

9 33. Holding Time. Defendant shall make every effort to ensure that all samples
10 collected from the Facilities shall be delivered to the laboratory and analyzed within the
11 holding times required in 40 C.F.R. Part 136, excepting pH which will be analyzed onsite
12 using a calibrated portable instrument for pH in accordance with accompanying
13 manufacturer's instructions;

14 34. Reports to Plaintiffs. Defendant shall provide the complete lab results and pH
15 results of all samples collected at the Facility to Plaintiffs within twenty one (21) days of
16 receiving the lab results;

17 35. Sampling Reduction. Defendant may discontinue analyzing stormwater
18 samples collected pursuant to this Consent Decree at any discharge location(s) for a
19 constituent listed in paragraph 30 if: (a) the sample result for the paragraph 30 constituent
20 is not detected for three (3) consecutive sample results, (b) Defendant has collected and
21 analyzed the sample pursuant to this Consent Decree, and (c) that constituent is not
22 otherwise required to be analyzed pursuant to Section XI(B)(6) or Table 1 of the
23 Stormwater Permit.

24 36. **Stormwater Discharge Observations:** During the life of this Consent
25 Decree, Defendant shall conduct visual observations at each discharge location during
26 every rain event that produces a discharge when employees are present on-site.

27 37. **Visual Observations Records:** Defendant shall maintain observation records
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1 to document compliance with paragraph 36, and shall provide Plaintiffs with a copy of
2 these records within twenty one (21) days of receipt of a written request from Plaintiffs
3 for the records.

4 **iii. Employee Training, SWPPP, and M&RP**

5 38. **Employee Training Program:** Within ninety (90) days of the Effective Date,
6 Defendant shall develop an employee training program that meets the following
7 requirements and ensures (1) that there is a sufficient number of employees at the
8 Facilities designated to achieve compliance with the Stormwater Permit and this Consent
9 Decree, and (2) that these employees are properly trained to perform the activities
10 required by the Stormwater Permit and this Consent Decree ("Training Program"):

11 39. Language. Defendant shall provide the Training Program in the language or
12 languages in which all employees participating are fluent;

13 40. BMP Training. Defendant shall train all employees on the BMPs included in
14 this Consent Decree and the SWPPP to ensure that BMPs are implemented effectively
15 and on schedule and structural BMPs are maintained properly at the Facilities. Defendant
16 shall train individual employees on their specific responsibilities in implementing BMPs;

17 41. Sampling Training. Defendant shall designate an adequate number of
18 employees necessary to collect stormwater samples as required by this Consent Decree.
19 The Training Program shall include the proper sampling protocols to ensure stormwater
20 samples are properly collected, stored, and submitted to a certified laboratory;

21 42. Visual Observation Training. Defendant shall provide training on how and
22 when to properly conduct visual observations to all employees performing visual
23 observations at the Facilities;

24 43. Non-Stormwater Discharge Training. Defendant shall train all employees at
25 the Facilities on the Stormwater Permit's prohibition of non-stormwater discharges, so
26 that employees know what non-stormwater discharges are, that non-stormwater
27 discharges can result from improper surface washing or dust control methods, and how to
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1 detect and prevent non-stormwater discharges;

2 44. Employees. All employees at the Facilities shall participate in the Training
3 Program within forty-five (45) days of the development of the training program set forth
4 above in paragraph 38, and annually thereafter. New employees shall participate in the
5 Training Program within sixty (60) days of their hiring date;

6 45. Knowledgeable Representative. The Training Program shall be administered
7 by a private consultant or representative of Defendant who is Qualified Industrial
8 Stormwater Practitioner ("QISP") certified and familiar with the requirements of this
9 Consent Decree and the Stormwater Permit;

10 46. Training Records. Defendant shall maintain training records to document
11 compliance with this section, and shall provide Plaintiffs with a copy of these records
12 within twenty one (21) days of receipt of a written request; and

13 47. Integration of Training Program Updates into SWPPP. Defendant shall update
14 the SWPPP, if and when appropriate, to identify the positions responsible for carrying out
15 stormwater management, monitoring, sampling, and SWPPP implementation.

16 48. SWPPP: By July 15, 2018, Defendant shall amend the Facilities SWPPPs to
17 incorporate the requirements and BMPs set forth in this Consent Decree and submit the
18 updated SWPPPs to Plaintiffs. If the Stormwater Retention design is delayed due to an
19 ongoing dispute between the parties regarding its sufficiency, that portion of the SWPPP
20 may be revised after July 15, 2018, but before October 15, 2018. The Parties agree that
21 Defendant is not required to submit a SWPPP required by this paragraph to SMARTS
22 until the BMPs it describes are implemented.

23 49. Plaintiffs' Review of SWPPP. Plaintiffs shall have fifteen (15) days from
24 receipt of the amended SWPPP to propose any changes. Within thirty (30) days of
25 notification by Plaintiffs of any proposed changes to the SWPPP, Defendant shall make
26 all of Plaintiffs' changes to the amended SWPPP or justify in writing why a change is not
27 incorporated;

1 50. Defendant shall revise the SWPPPs if there are any material changes in a
2 facility's operations, including, but not limited to, changes to stormwater discharge points
3 or BMPs within thirty (30) days of the changes, which will be subject to Plaintiffs'
4 review and comment as provided in paragraph 49, above;

5 51. Compliance with the SWPPP, as amended and/or revised in accordance with
6 this section, shall, at all times be a requirement of this Consent Decree.

7 52. MIP: Concurrent with providing the SWPPP required by paragraph 48 to
8 Plaintiffs, Defendant shall amend the Facilities' Monitoring Implementation Plans
9 ("MIPs") to incorporate the sampling and monitoring requirements set forth in this
10 Consent Decree and provide the MIP to Plaintiffs concurrently with its SWPPP.

11 53. Plaintiffs' Review of MIPs. Plaintiffs shall have fifteen (15) days from receipt
12 of the amended MIPs to propose any changes. Within thirty (30) days of notification by
13 Plaintiffs of any proposed changes to the MIP, Defendant shall make all of Plaintiffs'
14 changes to the amended MIPs or justify in writing why a change is not incorporated;

15 54. Defendant shall revise a facility's MIP if there are any material changes in a
16 facility's operations, including, but not limited to, changes to stormwater discharge points
17 or BMPs. These MIP revisions shall occur within forty-five (45) days of the changes,
18 which will be subject to Plaintiffs' review and comment as provided in paragraph 53,
19 above;

20 55. Compliance with the MIPs, as amended and/or revised in accordance with this
21 section, shall, at all times be a requirement of this Consent Decree..

22 **C. Stormwater Discharge Action Plan**

23 56. **Stormwater Discharge Reduction:** If, after complete implementation of the
24 Stormwater Retention BMP at any Facility, there is a stormwater discharge from that
25 Facility in a rain event Defendant shall either confirm in writing to Plaintiffs that the
26 discharge resulted from a storm event that generated a greater volume of water than the
27 Stormwater Retention BMP is designed to capture or was the result of a temporary
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1 system failure. If neither of the above applies, Defendant shall develop and implement an
2 action plan designed to ensure that the Stormwater Retention BMP at the site
3 experiencing the discharge functions as required and retains the required volume of
4 stormwater ("Retention Action Plan"). A discharge from the Facilities resulting from a
5 storm event that generated less water than that required to be retained on site, as set forth
6 in paragraph 18, shall be a violation of this Consent Decree unless the discharge is caused
7 by a temporary system failure or operator error. If a discharge occurs from a temporary
8 system failure, then Defendant shall engage in any necessary system maintenance to
9 prevent the failure from reoccurring. If the discharge is caused by operator error, then
10 operator training will occur within sixty (60) days to remedy that issue.

11 57. In any reporting year that a Retention Action Plan is required, it shall be
12 submitted to Plaintiffs within one hundred (100) days from the date of the discharge
13 triggering the Retention Action Plan. At a minimum, a Retention Action Plan shall
14 include:

- 15 a. The identification of the location of the discharge;
- 16 b. Sampling results from the discharge;
- 17 c. An assessment of the size of the storm event and the volume of stormwater
18 generated that resulted in the discharge;
- 19 d. The identification of additional BMPs, including an evaluation of
20 increased stormwater retention BMP(s), that are designed to achieve
21 compliance with the retention volumes required by paragraph 18; and
- 22 e. Time schedules for implementation of the proposed BMPs that ensure that
23 all Retention Action Plan measures in a Retention Action Plan are
24 implemented as soon as possible, but in no case later than October 15 of
25 the same calendar year, provided that if a required Retention Action Plan
26 results from a storm event occurring after April 1 in any reporting year the
27 schedule for implementing the proposed measures shall ensure the
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measures are implemented as soon as practicable and in no case later than December 15.

58. **Plaintiffs' Review of Retention Action Plans:** Plaintiffs shall have twenty-one (21) days from receipt of any Retention Action Plan(s) to propose revisions. Within forty-five (45) days of receiving Plaintiffs proposed revisions, Defendant shall consider each of Plaintiffs' recommended revisions to a Retention Action Plan(s), and accept them or justify in writing why any comment is not incorporated. Action Plan(s) developed and implemented pursuant to this Consent Decree are an obligation of this Consent Decree.

D. Consent Decree Compliance Monitoring and Reporting

59. **Site Inspections:** During the Term of this Consent Decree, Defendant shall permit representatives of Plaintiffs to perform inspections of each of the Facilities during operating hours ("Site Inspection") as follows: a single Site Inspection at each Facility following implementation of the Stormwater Retention BMP(s) required by paragraph 18; a single Site Inspection each reporting year during the life of this Consent Decree (July to June). In the event of a dispute regarding Defendant's compliance with this Consent Decree, and provided a Site Inspection would be relevant to resolving the Parties' dispute, Plaintiffs may request an additional Site Inspection and the Parties agree to meet and confer regarding the additional Site Inspection request. Defendant shall not unreasonably deny Plaintiffs' request for an additional Site Inspection. Plaintiffs shall provide Defendant at least five (5) business-days' notice in advance of such Site Inspections. For inspections requested to occur in dry weather, Defendant shall have the right to request an alternative date for said inspection that is within ten (10) days of the date noticed by Waterkeeper. For any Site Inspection requested to occur in wet weather, Plaintiffs shall be entitled to reschedule the Site Inspection in the event the forecast changes and the expected precipitation appears unlikely and the purpose of visiting the Facility in wet weather, such as to take samples or observe the effectiveness of the Facilities' BMPs, would be frustrated. Plaintiffs agree to give Defendant at least fifteen

1 (15) hours notice of their intent to reschedule a requested wet weather Site Inspection.
2 During any Site Inspection pursuant to this paragraph, Plaintiffs shall wear all required
3 personal protective equipment and comply with all safety instructions provided to
4 Plaintiffs by Defendant's staff during all Site Inspections. During Site Inspections,
5 Plaintiffs shall be allowed to inspect any SWPPPs, M&RPs, and logs, sample any
6 stormwater discharges, and take photos and/or videos. Plaintiffs must within one week of
7 the site visit send copies of all photos and/or videos to Defendant and conduct an exit
8 conference with Defendant's staff regarding all photos and/or videos taken the day of the
9 site visit. Site inspections pursuant to this paragraph shall not exceed 3 hours at any one
10 Facility.

11 60. **Document Provision:** During the term of this Consent Decree, Defendant
12 shall copy Plaintiffs on documents and other written communications regarding the
13 Facilities related to water quality submitted to the Regional Water Board, the State Water
14 Board, and/or any Federal, State, local agency, county, or municipality. Any
15 correspondence related to water quality received by Defendant from any Federal, State,
16 local agency, county, or municipality shall be provided to Plaintiffs via email within ten
17 (10) business days of receipt by Defendant. Defendant shall also provide a copy of any
18 non-privileged documents reasonably related to Consent Decree compliance within thirty
19 (30) days of written request by Plaintiffs.

20 61. **Compliance Monitoring and Oversight:** Defendant agrees to partially defray
21 Plaintiffs' monitoring of Defendant's compliance with this Consent Decree in the amount
22 of forty-five thousand dollars (\$45,000.00) with thirty thousand dollars (\$30,000.00) to
23 be paid to Orange County Coastkeeper and fifteen thousand dollars (\$15,000.00) to be
24 paid to Los Angeles Waterkeeper. The payments, in full, shall be made within forty-five
25 (45) days of the end of the 45-day Federal Agencies review period described above. The
26 payment due to Orange County Coastkeeper shall be made payable to: "Orange County
27 Coastkeeper" and delivered by overnight mail to Coastkeeper, 3151 Airway Avenue,
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1 Suite F-110, Costa Mesa, CA 92626. The payment due to Los Angeles Waterkeeper shall
2 be made payable to: "Los Angeles Waterkeeper" and delivered by overnight mail to Los
3 Angeles Waterkeeper, 120 Broadway, Suite 105, Santa Monica, CA 90401.

4 62. **Action Plan Payments:** If Defendant is required to submit an Action Plan(s)
5 to Plaintiffs pursuant to this Consent Decree, Defendant shall make an Action Plan
6 payment of three thousand (\$3,000.00) per Action Plan. Action Plan(s) related to the
7 Irvine Facility or Fontana Facility shall be made payable to: "Orange County
8 Coastkeeper" and delivered by overnight mail, unless made by wire transfer, to Orange
9 County Coastkeeper, 3151 Airway Avenue, Suite F-110, Costa Mesa, CA 92626. Action
10 Plan(s) related to the Compton Facility shall be made payable to: "Los Angeles
11 Waterkeeper" and delivered by overnight mail to Los Angeles Waterkeeper, 120
12 Broadway, Suite 105, Santa Monica, CA 90401. Payment shall be made
13 contemporaneous with the submittal of the Action Plan(s).

14 E. **Environmental Mitigation, Litigation Fees And Costs, Stipulated**
15 **Penalties, and Interest**

16 63. **Environmental Mitigation Project:** To remediate alleged environmental
17 harms resulting from allegations in the complaint, Defendant agrees to make a payment
18 of fifty-five thousand dollars (\$55,000.00) with \$18,000 to be paid to Pacific Marine
19 Mammal Center, 20612 Laguna Canyon Road Laguna Beach, CA 92651, \$18,000 to be
20 paid to Rivers and Lands Conservancy, 4075 Mission Inn Avenue Riverside, CA 92501,
21 and \$19,000 to be paid to From Lot to Spot, ATTN: Viviana Franco 2003 East 1st Street,
22 Los Angeles CA 90033. These payments will fund environmental project activities that
23 will benefit Southern California waters. The payments, in full, shall be made within
24 ninety (90) days of the entry of this Consent Decree by the Court. Defendant shall
25 provide Plaintiffs with a copy of such payment at the time it is made.

26 64. **Plaintiffs' Litigation Costs:** To partially reimburse Plaintiffs for their
27 investigation fees and costs, expert/consultant fees and costs, reasonable attorneys' fees,
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1 and other costs incurred as a result of investigating and filing the lawsuit, and negotiating
2 this Consent Decree, Defendant shall pay a total of one hundred and seventy thousand
3 dollars (\$170,000.00). The payment, in full, shall be made within ninety (90) days of the
4 end of the 45-day Federal Agencies review period described above or within ten (10)
5 days of the date the Federal Agencies inform the Court that they have no objections to
6 entry of this Consent Decree, whichever is sooner, payable to: Los Angeles Waterkeeper,
7 120 Broadway, Suite 105, Santa Monica, CA 90401.

8 65. **Stipulated Penalties:** Defendant shall make a remediation payment of Five
9 Hundred Dollars (\$500.00) for each missed deadline included in the Consent Decree or
10 the failure to collect a stormwater sample required under this Consent Decree after the
11 Effective Date. Payments for missed deadlines with respect to the Irvine Facility or
12 Fontana Facility shall be made to Pacific Marine Mammal Center, 20612 Laguna Canyon
13 Road Laguna Beach, CA 92651 or Rivers and Lands Conservancy, 4075 Mission Inn
14 Avenue Riverside, CA 92501, respectively. Payments for missed deadlines with respect
15 to the Compton Facility shall be made to From Lot to Spot, ATTN: Viviana Franco 2003
16 East 1st Street, Los Angeles CA 90033. Defendant agrees to make the stipulated payment
17 within thirty (30) days of a missed deadline. Defendant shall provide Plaintiffs with a
18 copy of each such payment at the time it is made.

19 66. **Interest on Late Payments:** Defendant shall pay interest on any payments,
20 fee or costs owed to Plaintiffs under this Consent Decree that Plaintiffs has not received
21 by the date due. The interest shall accrue starting the first day after the payment is due
22 and shall be computed at 5% per year.

23 **III. DISPUTE RESOLUTION**

24 67. The Court shall retain jurisdiction over this matter for the life of the Consent
25 Decree for the purposes of enforcing its terms and conditions, and adjudicating all
26 disputes among the Settling Parties that may arise under the provisions of the Consent
27 Decree. The Court shall have the authority to enforce this Consent Decree with all
28

1 available legal and equitable remedies, including contempt.

2 68. If a dispute under this Consent Decree arises or the Settling Parties believe
3 that a breach of this Consent Decree has occurred, they shall follow the following
4 procedure:

- 5 a. Meet and Confer. A Settling Party invokes the dispute resolution
6 procedures of this Section by notifying in writing the other Settling Party
7 of the matter(s) in dispute. The Settling Parties shall schedule a meet and
8 confer in good faith (either telephonically or in person) within ten (10)
9 days from the date of the notice. The Settling Parties may elect to extend
10 this time in an effort to resolve the dispute without court intervention;
- 11 b. Settlement Conference. If the Settling Parties fail to meet and confer, or
12 cannot resolve a dispute through the informal meet and confer process, the
13 Settling Parties agree to request a settlement meeting or conference before
14 the Magistrate Judge assigned to this action. The Settling Parties agree to
15 file any waivers necessary for the Magistrate Judge to preside over any
16 settlement meeting or conference;
- 17 c. Motion. In the event that the Settling Parties cannot resolve the dispute
18 within sixty (60) days of the initial settlement meeting or conference with
19 the Magistrate Judge, the Settling Parties agree that the dispute may be
20 submitted for formal resolution by filing a motion before the United States
21 District Court for the Central District of California. The Settling Parties
22 agree to request an expedited hearing schedule on the motion.
- 23 d. The Settling Parties shall be entitled to seek fees and costs incurred in the
24 informal and formal Dispute Resolution process described in this section
25 pursuant to the provisions set forth in Section 505(d) of the Clean Water
26 Act, 33 U.S.C. § 1365(d), and applicable case law interpreting such
27 provisions.
- 28

1 **IV. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

2 69. **Plaintiffs' Waiver and Release of Defendant:** Plaintiffs, on their own
3 behalf, and on behalf of their officers, directors, employees, parents, subsidiaries,
4 affiliates and each of their successors and assigns, release Defendant, their officers,
5 directors, managers, employees, members, parents, subsidiaries, affiliates, successors or
6 assigns, agents, attorneys and other representatives, from and waives all claims that were
7 or could have been raised in the 60-Day Notices and/or the complaint up to the Effective
8 Date.

9 70. **Defendant's Waiver and Release of Plaintiffs:** Defendant, on its own
10 behalf, and on behalf of its officers, directors, managers, employees, members, parents,
11 subsidiaries, affiliates, or their successors or assigns, release Plaintiffs and their officers,
12 directors, employees, members, parents, subsidiaries, and affiliates, and each of their
13 successors and assigns from, and waives all claims related to the 60-Day Notices and/or
14 the complaint up to the Effective Date.

15 71. Nothing in this Consent Decree limits or otherwise affects Plaintiffs' rights to
16 address or take any position that it deems necessary or appropriate in any formal or
17 informal proceeding before the State Water Board, Regional Water Board, EPA, or any
18 other judicial or administrative body on any matter relating to Defendant's compliance at
19 the Facilities with the Stormwater Permit or the Clean Water Act, but, except as noted in
20 the next sentence, only to the extent that the relevant facts occur or arise after entry of
21 this Consent Decree. In such proceedings, Plaintiffs may use pre-Consent Decree
22 information related to the Facilities as background information but not to establish any
23 non-compliance.

24 **V. MISCELLANEOUS PROVISIONS**

25 72. **No Admission of Liability:** Neither this Consent Decree, the implementation
26 of additional BMPs or any payment pursuant to the Consent Decree shall constitute or be
27 construed as a finding, admission, or acknowledgement of any fact, law, rule, or
28

1 regulation. Defendant maintains and reserves all defenses it may have to any alleged
2 violations that may be raised in the future.

3 73. **Execution in Counterparts:** The Consent Decree may be executed in any
4 number of counterparts, all of which together shall constitute one original document.
5 Telecopy, email of a pdf signature, and/or facsimile copies of original signature shall be
6 deemed to be originally executed counterparts of this Consent Decree.

7 74. **Signatures:** The Settling Parties' signatures to this Consent Decree
8 transmitted by facsimile or electronic mail transmission shall be deemed binding.

9 75. **Construction:** The language in all parts of this Consent Decree shall be
10 construed according to its plain and ordinary meaning, except as to those terms defined in
11 the Stormwater Permit, the Clean Water Act, or specifically herein. The captions and
12 paragraph headings used in this Consent Decree are for reference only and shall not affect
13 the construction of this Consent Decree.

14 76. **Authority to Sign:** The undersigned representatives for Plaintiffs and
15 Defendant each certify that he/she is fully authorized by the Settling Party whom he/she
16 represents to enter into the terms and conditions of this Consent Decree.

17 77. **Integrated Consent Decree:** This is an integrated Consent Decree. This
18 Consent Decree is intended to be a full and complete statement of the terms of the
19 agreement between the Settling Parties and expressly supersedes any and all prior oral or
20 written agreements, covenants, representations and warranties, express or implied, oral or
21 written, of the Settling Parties concerning the subject matter of this Consent Decree.

22 78. **Severability:** In the event that any provision, paragraph, section, or sentence
23 of this Consent Decree is held by a court to be unenforceable, the validity of the
24 enforceable provisions shall not be adversely affected.

25 79. **Choice of Law:** This Consent Decree shall be governed by the laws of the
26 United States.

27 80. **Full Settlement:** This Consent Decree constitutes a full and final settlement

1 of this matter.

2 81. **Diligence:** Defendant shall diligently file and pursue all required permit
3 applications for the structural BMPs and shall diligently procure contractors, labor, and
4 materials needed to complete all structural BMPs by the required deadlines. Defendant
5 compliance shall be excused to the extent caused by governmental permitting delays or a
6 Force Majeure as defined in Paragraph 87. Governmental permitting delays means
7 CEMEX has timely filed permit requests and necessary government approvals are not
8 issued timely to CEMEX.

9 82. **Negotiated Agreement:** The Settling Parties have negotiated this Consent
10 Decree, and agree that it shall not be construed against the party preparing it, but shall be
11 construed as if the Settling Parties jointly prepared this Consent Decree, and any
12 uncertainty and ambiguity shall not be interpreted against any one party.

13 83. **Modification of the Agreement:** This Consent Decree, and any provisions
14 herein, may not be changed, waived, or discharged, or terminated unless by a written
15 instrument, signed by each of the Settling Parties and approved by the Court. Any request
16 to modify any provision(s) of the Consent Decree, including but not limited any
17 deadline(s) set out herein, must be made in writing at least fourteen (14) business days
18 before an existing deadline(s) applicable to the provision(s) proposed to be modified.

19 84. **Assignment:** Subject only to the express restrictions contained in this
20 Consent Decree, all of the rights, duties and obligations contained in this Consent Decree
21 shall inure to the benefit of and be binding upon the Settling Parties, and their successors
22 and assigns. Defendant shall notify Plaintiffs within ten (10) days of any assignment, in
23 conformity with the paragraph below.

24 85. **Notices and Submissions:** Any notices or documents required or provided
25 for by this Consent Decree or related thereto that are to be provided to Plaintiffs pursuant
26 to this Consent Decree shall be, to the extent feasible, sent via electronic mail
27 transmission to the e-mail address listed below or, if electronic mail transmission is not
28

feasible, via certified U.S. Mail with return receipt, or by hand delivery to the following address:

Colin Kelly

Sarah Spinuzzi

Email: colin@coastkeeper.org

Email: sarah@coastkeeper.org

Orange County Coastkeeper

3151 Airway Avenue

Suite F-110

Costa Mesa, CA 92626

Arthur Pugsley

Melissa Kelly

Los Angeles Waterkeeper

Email: arthur@lawaterkeeper.org

Email: melissa@lawaterkeeper.org

120 Broadway, Suite 105

Santa Monica, California 90401

With copies to:

Bruce Reznik

Executive Director

Email: bruce@lawaterkeeper.org

Los Angeles Waterkeeper

120 Broadway, Suite 105

Santa Monica, California 90401

Unless requested otherwise by Defendant, any notices or documents required or provided for by this Consent Decree or related thereto that are to be provided to Defendant pursuant to this Consent Decree shall be provided by certified U.S. Mail with return receipt, by overnight courier, FedEx, or by hand delivery to the addresses below:

CEMEX

Attn: General Counsel

1501 Belvedere Road

West Palm Beach, FL 33406

1 With copies to:
2

3 CEMEX

4 Attention: Director of Environmental Services

5 3990 E. Conours

6 Ontario, CA 91764

7 bruceh.eppler@cemex.com

8 brian.mastin@cemex.com

9 Notifications of communications shall be deemed submitted on the first business day
10 following the date that they are postmarked and sent by first-class mail or deposited with
11 an overnight mail/delivery service. As the exception to the above notice procedures,
12 email notice shall be permissible for the following sections of this Consent Decree: 19,
13 20, 21, 24, 34, 48, 49, 50, 52, 53, 54, 56, 57, 58, 59, and 60. Any change of address or
14 addresses shall be communicated in the manner described above for giving notices.

15 86. **Deadlines Falling on Non-Business Days:** Any deadlines relating to this
16 Consent Decree which fall on the weekend or on a federal holiday shall be extended to
17 the following business day.

18 87. **Force Majeure:** No Party shall be considered to be in default in the
19 performance of any of its obligations under this Consent Decree when performance
20 becomes impossible due to a Force Majeure event. A Force Majeure event is any
21 circumstance beyond a Settling Party's control, including without limitation, any act of
22 God, war, fire, earthquake, flood, windstorm, or natural catastrophe; criminal acts; civil
23 disturbance, vandalism, sabotage, or terrorism; restraint by court order or public authority
24 or agency; or action or non-action by, or inability to obtain the necessary authorizations
25 or approvals from, any governmental agency. A Force Majeure event shall not include
26 normal inclement weather, economic hardship, inability to pay, employee negligence or
27 misconduct, or Defendant's inability to obtain authorization or permission from the
28 owner(s) of the real property where the Facilities are located for meeting compliance
and/or settlement obligation(s). Any party seeking to rely upon this paragraph to excuse

1 or postpone performance shall have the burden of establishing that it could not
2 reasonably have been expected to avoid the force majeure event and which by exercise of
3 due diligence has been unable to overcome the failure of performance. The
4 Settling Parties shall exercise due diligence to resolve and remove any force majeure
5 event.

6 88. Request for Records: Under any section of this Consent Decree that allows
7 Plaintiffs to make a written request for Defendant's records, Plaintiffs shall not make
8 such unreasonably frequent requests so as to become an administrative burden on
9 Defendant.

10 The Settling Parties hereto enter into this Consent Decree and submit it to the
11 Court for its approval and entry as a final judgment.

12 IN WITNESS WHEREOF, the undersigned have executed this Consent Decree
13 as of the date first set forth below.

14 APPROVED AS TO CONTENT

15
16 Dated: March 8, 2018

By: Garry Brown
Garry Brown
Orange County Coastkeeper

17
18
19 Dated: March 8, 2018

By: Bruce Reznik
Bruce Reznik
Los Angeles Waterkeeper

20
21
22
23 Dated: March 8, 2018

By: Garry Brown
Garry Brown
Inland Empire Waterkeeper

24
25
26 Dated: March 15, 2018

By: Michael Egan
Michael Egan
Center for Environmental and Public Health

27
28 (00034642)

[Proposed] CONSENT DECREE

26

Case No. 5:17-cv-01137-SP

Cemex Construction Materials Pacific LLC

APPROVED AS TO FORM

LAWYERS FOR CLEAN WATER, INC.

Dated: March 16, 2018

By: 

Drevet Hunt
Attorney for Plaintiffs

MITCHELL CHADWICK LLP

Dated: March 15, 2018

By: 

Patrick Mitchell
Attorney for Defendant

IT IS SO ORDERED.

Date: 5/21/18

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA


Philip S. Gutierrez
United States District Judge